

# MEMORANDUM

MSC

Agenda Item No. 1G1

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**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** June 10, 2015

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Ordinance related to civil  
penalties for certain  
misdemeanor violations;  
amending sections 21-81,  
8CC-5.1 and 8CC-10 of the  
Code; providing for civil  
penalties for the commission  
of certain misdemeanors

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The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.

  
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R. A. Cuevas, Jr.  
County Attorney

RAC/cp



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** April 21, 2015

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 4(D)

Please note any items checked.

- ☒ "3-Day Rule" for committees applicable if raised
- ☒ 6 weeks required between first reading and public hearing
- ☒ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☒ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 4(D)  
4-21-15

ORDINANCE NO. \_\_\_\_\_

ORDINANCE RELATED TO CIVIL PENALTIES FOR CERTAIN MISDEMEANOR VIOLATIONS; AMENDING SECTIONS 21-81, 8CC-5.1 AND 8CC-10 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; PROVIDING FOR CIVIL PENALTIES FOR THE COMMISSION OF CERTAIN MISDEMEANORS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**WHEREAS**, the Board of County Commissioners of Miami-Dade County (the "Board") is given broad authority to enact ordinances under Miami-Dade County's home rule powers and prescribe penalties for violation of such ordinances; and

**WHEREAS**, section 21-81 of the Code of Miami-Dade County, Florida, (the "Code") is applicable in all the unincorporated and incorporated areas of Miami-Dade County; and

**WHEREAS**, section 21-81 of the Code prohibits the commission of all acts defined as misdemeanors under Florida Statutes and declares commission of such acts to also be Code violations; and

**WHEREAS**, upon conviction in court of a Code violation for commission of an act defined as a misdemeanor, misdemeanants shall be punished by a fine or imprisonment in County jail or both, but in no case shall the fine and/or or imprisonment imposed be greater than the maximum fine or penalty for the same offense under the Florida Statutes; and

**WHEREAS**, currently, a law enforcement officer only has discretion to arrest or not arrest a person for commission of a misdemeanor and/or Code violation; and

**WHEREAS**, this ordinance provides an additional means under Chapter 8CC of the Code to enforce violations of the Code based on the commission of certain misdemeanors; and

**WHEREAS**, the Board has an interest in enacting monetary civil penalties for certain violations of section 21-81, as such civil penalties will act as an additional deterrent to such violations and would provide law enforcement with additional options when encountering a misdemeanor who has committed an enumerated offense; and

**WHEREAS**, for the specific statutes enumerated in this ordinance a law enforcement officer will have the discretion to issue a civil citation and/or arrest or not arrest a person for commission of a misdemeanor and/or Code violation; and

**WHEREAS**, this ordinance will also allow a violator who has been served with a civil violation notice imposing a monetary penalty for commission of an enumerated misdemeanor to enter the Miami-Dade County Diversion Program, pursuant to Miami-Dade County Implementing Order 2-12 which would allow violators without economic means to satisfy a civil penalty to satisfy the penalty by non-monetary means,

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:**

**Section 1.** Section 21-81 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:<sup>1</sup>

**Sec. 21-81. Misdemeanor; adoption of State law; penalties.**

\* \* \*

- (c) All acts defined as misdemeanors in said State statutes are hereby prohibited and declared to be violations of this article and any person or corporation shall, upon conviction in the court of appropriate jurisdiction for violation thereof, be punished by a fine not exceeding five hundred dollars

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<sup>1</sup> Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

(\$500.00) or by imprisonment in the County Jail for not more than sixty (60) days, or by both such fine and imprisonment, but in no case shall the fine or imprisonment imposed under this article be greater than the maximum fine or penalty for the same offense under the State statute.

>>(d) The following misdemeanor violations, as such may be amended from time, are eligible to receive a civil violation notice pursuant to chapter 8CC of the Code of Miami-Dade County, Florida, at the discretion of a law enforcement officer, provided that such violations are not charged in conjunction with any charge that is a felony, driving under the influence (DUI), incident involving domestic violence, or violent crime, as those terms are defined under State law:

- (1) Florida Litter Law, as set forth in Fla. Stat. section 403.413(6)(b), as such may be amended from time to time;
- (2) Illegal Use of Dairy Cases, Egg Baskets, Poultry Boxes, or Bakery Containers, as set forth in Fla. Stat. section 506.509, as such may be amended from time to time;
- (3) Trespass on Property Other Than Structure or Conveyance, as set forth in Fla. Stat. section 810.09, as such may be amended from time to time;
- (4) Retail Theft by Removal of a Shopping Cart, as defined in Fla. Stat. section 812.015(1)(d), as such may be amended from time to time;
- (5) Loitering or Prowling, as set forth in Fla. Stat. section 856.021, as such may be amended from time to time;
- (6) Possession of Cannabis in an amount of 20 grams or less, as set forth in Fla. Stat. section 893.13(6)(b), as such may be amended from time to time; and
- (7) Possession of Drug Paraphernalia, as set forth in Fla. Stat. sections 893.146 and 893.147(1)(b), as such may be amended from time to time.

An individual issued a civil violation notice for any of the violations listed in this subsection shall be subject to fine in accordance with chapter 8CC of the Code of Miami-Dade County, Florida, and shall be eligible for the Miami-Dade County Diversion Program, pursuant to section 8CC-5.1 of the Code of Miami-Dade County, Florida, and Implementing Order 2-12, or its successor Implementing Order of the Board of County Commissioners.<<

**Section 2.** Section 8CC-5.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 8CC-5.1. Miami-Dade County Diversion Program.**

Notwithstanding the provisions of >>section<< 8CC-5, a violator who has been served with a civil violation notice may enter the Miami-Dade County Diversion Program, pursuant to Implementing Order of the Board of County Commissioners, provided the civil violation notice is issued for the violation of an ordinance listed in the table below, which may be amended from time to time.

The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

Code Section	Description of Violation
7-3	Swimming or fishing from prohibited road bridges
8A-172	Conducting business without a local business tax receipt
8A-276(b)	Failure to display commercial vehicle markings
21-28	Producing loud or excessive noise
21-31.2(b)(1), (2)	Alcohol possession or consumption near a store
21-31.4(B)	Obstructing traffic or aggressively begging
>>21-81(d)<<	>>Any one of the specific misdemeanors

	<u>enumerated in section 21-81(d)&lt;&lt;</u>
26-1	Parks violations

**Section 3.** Section 8CC-10 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**Sec. 8CC-10. Schedule of civil penalties.**

The following table shows the sections of this Code, as they may be amended from time to time, which may be enforced pursuant to the provisions of this chapter; and the dollar amount of civil penalty for the violation of these sections as they may be amended.

The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this Chapter 8CC, regardless of whether all activities proscribed or required within that particular section are described in the "Description of Violation" column. To determine the exact nature of any activity proscribed or required by this Code, the relevant Code section must be examined.

Code Section	Description of Violation	Civil Penalty
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\* \* \*

21-48	Sale and installation of satellite dish antennas to residential customers	500.00
>>21-81(d)<<	>> <u>Any one of the specific misdemeanors enumerated in section 21-81(d)&lt;&lt;</u>	>>100.00<<
21-112	Failure to properly fill an abandon well	100.00

\* \* \*

**Section 4.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 5.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**Section 6.** This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:



Prepared by:



Christopher A. Angell

Prime Sponsor: Commissioner Sally A. Heyman